

APPEAL NO. 031879  
FILED SEPTEMBER 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 27, 2003. The hearing officer determined that the \_\_\_\_\_, compensable injury of respondent (claimant) extends to an injury to the lumbar spine; and that claimant reached maximum medical improvement (MMI) on March 5, 2003, with an impairment rating (IR) of 13%. Appellant (carrier) appealed the MMI and IR determinations on sufficiency grounds, asserting that the medical evidence is contrary to the report of the Texas Workers' Compensation Commission-selected designated doctor, Dr. GU. Carrier asserts that the evidence does not support the determination regarding extent of injury. Carrier also contends that the second and third designated doctor reports are invalid because they address the MMI issue, when the only issue properly before them was the IR. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. We reject carrier's assertion that expert medical evidence was required in this case. See Texas Workers' Compensation Commission Appeal No. 022664, decided December 9, 2002. Carrier contends that the lumbar injury should not be included in the injury because claimant allegedly said at a benefit review conference (BRC) that "she would not be pursuing the lumbar area." However, claimant said she did not recall saying that. The hearing officer considered carrier's contentions in this regard and we perceive no reversible error. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination regarding extent of injury is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends that the hearing officer should have accepted the report of the first designated doctor and that the reports of the second and third designated doctors, Dr. G and Dr. GU, were invalid because they addressed the MMI issue when they were to address only the IR. However, a Request for Designated Doctor (TWCC-32) in the record dated February 18, 2002, and signed by an adjuster for carrier requests a designated doctor to resolve both the MMI and IR issues. The form EES-14 letters ordering claimant to attend designated doctor examinations with the three designated doctors in this case, all stated that the designated doctor was to consider both the MMI and IR issues. All three designated doctors addressed both the MMI date and the IR.

The date of MMI was an issue at the BRC and the parties agreed that it was an issue at the hearing. We perceive no error.

It appears that carrier also contends that the IR should not have included impairment for the lumbar spine and that the great weight of the other medical evidence is contrary to Dr. GU's report in this regard. We have affirmed the hearing officer's determination regarding extent of injury and, therefore, conclude that this contention is without merit. We conclude that the hearing officer did not err in according presumptive weight to the report of Dr. GU.

Carrier contends that claimant was at MMI as of March 23, 2002, with a five percent IR as certified by the first designated doctor, Dr. H. However, Dr. H did not rate the entire injury. Dr. H did not rate the knee injury; he rated only the back injury. It is undisputed that Dr. H was no longer available as a designated doctor, so he was not able to respond to letters of clarification in this regard. The hearing officer did not err in failing to accord presumptive weight to the report of Dr. H regarding MMI and IR.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ONE BEACON INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

---

Judy L. S. Barnes  
Appeals Judge

CONCUR:

---

Robert W. Potts  
Appeals Judge

---

Edward Vilano  
Appeals Judge